

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070743

ORDER DENYING MOTION TO
DISMISS

On July 17, 2013, Student filed a Request for Due Process Hearing (complaint), naming the San Diego Unified School District (District). On July 25, 2013, the District filed a Motion to Dismiss, alleging that Student's claim that the District's failed to timely assess Student after Parent's request was not ripe for adjudication. OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].

There is no right to file for a special education due process hearing absent an existing dispute between the parties. (*Guardians v. Los Angeles Unified School District, et al.*, (November 23, 2010) Cal.Admin.Ofc.Hrg. Case No. 2010110312.) Further, a claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated or indeed may not occur at all.'" (*See Id.*, citing *Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662.)

DISCUSSION

The District seeks to dismiss Student's complaint because the 60-day timeline for the District to complete the assessment requested by Parent has not run. Parent does allege that the District failed to present her with a timely assessment plan after her assessment request on an unspecified date in May 2013, which would mean that the District's time to complete the assessment has not expired even with a May 1, 2013 assessment request. However, a reading of the complaint implies that the District should have assessed Student sooner based on his behavioral difficulties. Therefore, the District's motion to dismiss is denied as a dispute may exist as to whether the District should have assessed Student before Parent's formal May 2013 request, and any ambiguity as to the specific dates can be clarified at the prehearing conference. Therefore, the District's motion to dismiss is denied without prejudice.

ORDER

The District's Motion to Dismiss is denied without prejudice. The matter shall proceed as scheduled.

Dated: August 1, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings